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BACKGROUND NOTE ON PROHIBITION OF MANUAL SCAVENGING AND PROTECTION OF THE RIGHTS OF SANITATION WORKERS IN INDIA

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The presence of dry latrines and the continuing practice of manual scavenging are serious sanitation challenges in India. This practice involves collecting human excreta, mostly by lower caste people – and more specifically mostly by women from lower castes –from individual or community toilets with bare hands, brooms or metal scrapers into wider baskets or buckets and carrying it dumping sites. An estimate made by the Asian Development Bank in 2009 reveals that over 700,000 Indians still earn their livelihood by engaging in manual scavenging.ⁱ This is a serious blow to human dignity as well as a sanitation challenge in terms of its impacts on human health and the environment. Death or serious injury to sanitation workers while cleaning sewerage with no or inadequate safeguards are not rare incidents. The safety of sanitation workers or ensuring scientific method of sanitation related works such as sewage cleaning is a major issue to be dealt under the sanitation framework.

1. Manual Scavenging

Manual scavenging is historically linked to the practice of untouchability and the continuation such practices is forbidden under the Constitution of India (Article 17). This constitutional aspiration has been given effect through the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993ⁱⁱ. The main features of this law are:

- Prohibition of employment of manual scavengers;
- Prohibition of construction or continuance of dry latrines;
- Regulation of construction and maintenance of water-seal latrines;
- Envisages government schemes for conversion of dry latrines into water-seal latrines, technical or financial assistance for low cost sanitation to local bodies and construction and maintenance of community latrines.

Though sanitation is an important part of this Act, this aspect has been undermined hitherto. This Act is predominantly seen as a law for the protection of the dignity of those involved in

the practice of manual scavenging and for the liberation of manual scavengers from this practice as well as for their rehabilitation. There is a fear that the focus on sanitation and public health dimensions would make the dignity of manual scavenger secondary to the sanitation facilities of the general public and environmental quality.

The government initiatives have not resulted in the complete eradication of the practice of manual scavenging. Thus, the implementation of this Act has been inadequate and improper and this resulted in the emergence of movements and campaigns for better implementation of this law. Further, the Act does not properly address issues relating to the rights of sanitation workers such as sewage cleaners and sweepers. This lack of clarity has resulted in a few litigations in different high courts for better working conditions for sanitation workers.ⁱⁱⁱ

2. Rights of sanitation workers

Like manual scavenging, sewerage work is also undertaken by lower caste people and closely linked to the practice of untouchability. Sanitation workers carry out their work mostly in unsafe working conditions without protective gears or other safety devices. Death or serious injury to sanitation workers while cleaning sewerage with no or inadequate safeguards are not rare incidents.^{iv} They are exposed to dangerous toxic and harmful substances. Despite its seriousness, this problem is not adequately addressed in the legal framework. This legal vacuum is being filled though guidelines issued by courts.^v For instance, the High Court of Gujarat made the following comments in support of sewerage workers' right to life and dignity:

The sewerage workers are the citizens of this country and they are entitled to enjoy fundamental right as provided in the Constitution of India. It is a cardinal principle of the service jurisprudence that the employer has to take adequate care of the safety and well being of his employee. He cannot expose an employee performing duties which are dangerous in nature and likely to adversely affect his health or life. The employer has to provide him with all the safety measures and if he is not able to make such provision, he has to refrain from asking such employee to discharge these dangerous duties.^{vi}

3. Legal reforms

The Government of India is considering a change in the law to address these loopholes. The Prohibition of Employment as Manual Scavengers and Their Rehabilitation Bill, 2012^{vii} is under consideration. The Bill seeks to introduce significant changes such as the expansion of the scope of the law to cover the issue of rights of sanitation workers and more stringent penal provisions for contravention of the Act.

ⁱ Asian Development Bank, India's Sanitation for All – How to Make it Happen (Manila: ADB, 2009), p. 10.

ⁱⁱ The full text of the statute is available at <http://www.ielrc.org/content/e9313.pdf>.

ⁱⁱⁱ See, e.g., *People's Union for Civil Liberties v. Government of NCT of Delhi*, Supreme Court of India, Civil Appeal No. 4911 of 2008 and *Sewerage Employees Union v. Union of India*, High Court of Punjab and Haryana, (2009) ILR 1 Punjab and Haryana 984.

^{iv} Times of India, 11 February 2012, http://articles.timesofindia.indiatimes.com/2012-02-11/chennai/31049799_1_sewage-scb-officials-sanitary-worker.

^v *Delhi Jal Board v. National Campaign for Dignity and Rights of Sewerage and Allied Workers*, Supreme Court of India, Civil Appeal No. 5322 of 2011, Decided on 12 July 2011.

^{vi} *Praveen Rashtrapal v. Chief Officer, Kadi Municipality*, High Court of Gujarat, (2006) 3 GLR 1809.

^{vii} Available at http://www.prsindia.org/uploads/media/Manual_Scavengers/Prohibition_of_Employment_as_Manual_Scavengers_and_their_Rehabilitation_Bill_2012.pdf.